

who is a victim, of a crime of a sexual offense in violation of section 709.2, 709.3, 709.4, 709.8, 709.9, 709.11, 709.12, 709.14, 709.15, or 709.16, which states that the presence of or contact with the defendant whose release from jail or prison is imminent or who has been released from jail or prison continues to pose a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family, the court shall enter a temporary no-contact order which shall require the defendant to have no contact with the victim, persons residing with the victim, or members of the victim's immediate family.

2. A temporary restraining order issued under this section shall expire at such time as the court directs, not to exceed ten days from the date of issuance. The court, for good cause shown before expiration of the order, may extend the expiration date of the order for up to ten days, or for a longer period agreed to by the adverse party.

3. Upon motion of the party, the court shall issue a no-contact order which shall require the defendant to have no contact with the victim, persons residing with the victim, or members of the victim's immediate family if the court, after a hearing, finds by a preponderance of the evidence, that the defendant poses a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family.

4. A no-contact order shall set forth the reasons for the issuance of the order, be specific in terms, and describe in reasonable detail the purpose of the order.

5. The court shall set the duration of the no-contact order for the period it determines is necessary to protect the safety of the victim, persons residing with the victim, or members of the victim's immediate family, but the duration shall not be set for a period in excess of one year from the date of the issuance of the order. The victim, at any time within ninety days before the expiration of the order, may apply for a new no-contact order under this section.

6. Violation of a no-contact order issued under this section constitutes contempt of court and may be punished by contempt proceedings.

Approved April 5, 2002

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## CHAPTER 1086

### TRUSTS AND ESTATES — MEDICAL ASSISTANCE BENEFITS — INTEREST DISCLAIMERS — TOTAL RETURN UNITRUSTS

*H.F. 2539*

**AN ACT** relating to trusts and estates and their relationship to medical assistance benefits, the right to disclaim on behalf of a ward, the creation of total return unitrusts, and providing an effective date.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 249A.2, Code 2001, is amended by adding the following new subsection: NEW SUBSECTION. 11. "Retained life estate" means any of the following:

a. A life estate created by the recipient or recipient's spouse, in which either the recipient or the recipient's spouse held any interest in the property at the time of the creation of the life estate.

b. A life estate created for the benefit of the recipient or the recipient's spouse in property in which either the recipient or the recipient's spouse held any interest in the property within five years prior to the creation of the life estate.

Sec. 2. Section 249A.5, subsection 2, paragraphs b and c, Code 2001, are amended to read as follows:

b. If the collection of all or part of a debt is waived pursuant to subsection 2, paragraph “a”, ~~subparagraph (1)~~, the amount waived shall be a debt due from the estate of the recipient’s surviving spouse, ~~or child who is blind or has a disability, or the recipient of a hardship waiver under subsection 2, paragraph “a”, subparagraph (2)~~, upon the death of ~~the such spouse, or child or recipient~~, or due from a surviving child who was under twenty-one years of age at the time of the recipient’s death, upon the child reaching age twenty-one, to the extent the recipient’s estate is received by ~~the surviving such spouse, or child, or recipient~~.

c. For purposes of this section, the estate of a medical assistance recipient, surviving spouse, or surviving child includes any real property, personal property, or other asset in which the recipient, spouse, or child had any legal title or interest at the time of the recipient’s, spouse’s, or child’s death, to the extent of such interests, including but not limited to interests in jointly held property, retained life estates, and interests in trusts.

Sec. 3. Section 633.647, Code 2001, is amended by adding the following new subsection: NEW SUBSECTION. 6A. To exercise the right to disclaim on behalf of the ward as provided in section 633.704.

Sec. 4. Section 633.704, subsection 3, paragraph c, Code 2001, is amended to read as follows:

c. DEATH OR DISABILITY OF DISCLAIMANT. If a person eligible to disclaim dies within the time allowed for a disclaimer, the right to disclaim continues for the time allowed and the personal representative of the person eligible to disclaim has the same right to disclaim as the disclaimant ~~and may disclaim on behalf of the personal representative’s decedent~~. If a person entitled to disclaim is disabled, the court may authorize or direct a conservator or guardian to exercise the right to disclaim on behalf of the person under disability if the court finds it is in the person’s best interests pursuant to section 633.647.

Sec. 5. Section 637.601, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

637.601 DEFINITIONS.

For purposes of this section:

1. “Disinterested person” means a person who is not a related or subordinate party as defined in section 672(c) of the Internal Revenue Code with respect to the person acting as trustee of the trust and excludes the trustor of the trust and any interested trustee.

2. “Income trust” means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee. However, a trust that does not meet this definition is nonetheless an income trust if the trust is subject to taxation under section 2001 or 2501 of the Internal Revenue Code, until the expiration of the period for filing the return, including extensions.

3. “Interested distributee” means a person, to whom distributions of income or principal can currently be made, who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party, as defined in section 672(c) of the Internal Revenue Code, with respect to such distributee.

4. “Interested trustee” means any of the following:

a. An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were to terminate and be distributed.

b. Any trustee who may be removed and replaced by an interested distributee.

c. An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

5. “Total return unitrust” means an income trust which has been converted under and meets the provisions of this subchapter.

6. "Trustee" means a person acting as trustee of the trust, except where expressly noted otherwise, whether acting in the trustee's discretion or on the direction of one or more persons acting in a fiduciary capacity.

7. "Trustor" means an individual who creates an inter vivos or a testamentary trust.

8. "Unitrust amount" means an amount computed as a percentage of the fair market value of the trust.

Sec. 6. NEW SECTION. 637.602 TRUSTEE'S AUTHORITY TO CONVERT.

A trustee, other than an interested trustee, or, where two or more persons are acting as trustee, a majority of the trustees who are not interested trustees, may, in the trustee's sole discretion and without the approval of the court, do any of the following subject to the requirements of section 637.603:

1. Convert an income trust to a total return unitrust.
2. Reconvert a total return unitrust to an income trust.
3. Change the method used to determine the fair market value of the trust.

Sec. 7. NEW SECTION. 637.603 TRUSTEE REQUIREMENTS TO CONVERT OR CHANGE COMPUTATION METHOD.

A trustee may proceed to take action under section 637.602 if all of the following apply:

1. The trustee adopts a written policy for the trust as follows:
  - a. In the case of a trust being administered as an income trust, requiring that future distributions from the trust will be unitrust amounts rather than net income.
  - b. In the case of a trust being administered as a total return unitrust, requiring that future distributions from the trust will be net income rather than unitrust amounts.
  - c. Requiring that the method used to determine the fair market value of the trust will be changed as stated in the policy.
2. The trustee sends written notice of the trustee's intention to take any action described in subsection 1, along with copies of such written policy and this subchapter, to all of the following persons:
  - a. The trustor of the trust, if living.
  - b. All living persons who are currently receiving or eligible to receive distributions of income of the trust.
  - c. All living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice, without regard to the exercise of any power of appointment or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in paragraph "b" were deceased.
  - d. All persons named in the governing instrument as adviser to or protector of the trust.
3. At least one person receiving notice under subsection 2, paragraph<sup>3</sup> "b" and "c", is legally competent.
4. No person receiving such notice under subsection 2, objects, by written instrument delivered to the trustee, to the proposed action of the trustee within sixty days of receipt of such notice.

Sec. 8. NEW SECTION. 637.604 INTERESTED TRUSTEE'S AUTHORITY TO CONVERT.

If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in the trustee's sole discretion and without the approval of the court, do any of the following subject to the requirements of section 637.605:

1. Convert an income trust to a total return unitrust.
2. Reconvert a total return unitrust to an income trust.
3. Change the method used to determine the fair market value of the trust.

<sup>3</sup> According to enrolled Act

Sec. 9. NEW SECTION. 637.605 INTERESTED TRUSTEE REQUIREMENTS TO CONVERT OR CHANGE COMPUTATION METHOD.

An interested trustee may proceed to take action under section 637.604 if all of the following apply:

1. The trustee adopts a written policy for the trust as follows:
  - a. In the case of a trust being administered as an income trust, requiring that future distributions from the trust will be unitrust amounts rather than net income.
  - b. In the case of a trust being administered as a total return unitrust, requiring that future distributions from the trust will be net income rather than unitrust amounts.
  - c. Requiring that the method used to determine the fair market value of the trust will be changed as stated in the policy.
2. The trustee appoints a disinterested person who, in its sole discretion, but acting in a fiduciary capacity, determines for the trustee the method to be used in determining the fair market value of the trust, and which assets, if any, are to be excluded in determining the unitrust amount.
3. The trustee sends written notice of the trustee's intention to take any action described in subsection 1, along with copies of such written policy, this subchapter, and the determination of the disinterested person to all of the following persons:
  - a. The trustor of the trust, if living.
  - b. All living persons who are currently receiving or eligible to receive distributions of income of the trust.
  - c. All living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice, without regard to the exercise of any power of appointment or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in paragraph "b" were deceased.
  - d. All persons named in the governing instrument as adviser to or protector of the trust.
4. At least one person receiving notice under subsection 3, paragraphs "b" and "c", is legally competent.
5. No person receiving the notice described in subsection 3 objects, by written instrument delivered to the trustee, to the proposed action of the trustee within sixty days of receipt of such notice.

Sec. 10. NEW SECTION. 637.606 PETITION TO COURT TO CONVERT TRUST.

If any trustee desires to do any of the following but does not have the ability to or elects not to do so under the provisions of section 637.602 or 637.604, the trustee may petition the court for such order as the trustee deems appropriate:

1. Convert an income trust to a total return unitrust.
2. Reconvert a total return unitrust to an income trust.
3. Change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust.

If, however, there is only one trustee of such trust and such trustee is an interested trustee or in the event there are two or more trustees of such trust and a majority of them are interested trustees, the court, in its own discretion or upon the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as necessary to enable the court to make its determinations.

Sec. 11. NEW SECTION. 637.607 VALUATION OF TRUST.

The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate. Such assets may be excluded from valuation, pro-

vided all income received with respect to such assets is distributed to the extent distributable in accordance with the terms of the governing instrument.

Sec. 12. NEW SECTION. 637.608 PAYOUT PERCENTAGE.

The annual unitrust payout percentage shall be four percent unless the governing instrument specifically provides a different percentage or the court approves a percentage of not less than three percent or more than five percent after notice of intent to seek a payout percentage other than four percent has been given to all of the following persons:

1. The trustor of the trust, if living.
2. All living persons who are currently receiving or eligible to receive distributions of income of the trust.
3. All living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice without regard to the exercise of any power of appointment or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in subsection 2 were deceased.
4. All persons named in the governing instrument as adviser to or protector of the trust.

Sec. 13. NEW SECTION. 637.609 UNITRUST AMOUNT.

The unitrust amount shall not be less than the net income of the trust, determined without regard to the provisions of section 637.610 for any of the following:

1. A trust for which a marital deduction has been taken for federal tax purposes under section 2056 or 2523 of the Internal Revenue Code, during the lifetime of the spouse for whom the trust was created.
2. A trust to which the generation-skipping transfer tax due under section 2601 of the Internal Revenue Code does not apply by reason of any effective date or transition rule.

Sec. 14. NEW SECTION. 637.610 PROCEDURE UPON CONVERSION OF INCOME TRUST TO TOTAL RETURN UNITRUST.

Following the conversion of an income trust to a total return unitrust, the trustee:

1. Shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust.
2. Shall allocate an amount to trust income, not in excess of the annual unitrust payout amount, in the following order:
  - a. The amount derived from net income, as determined if the trust were other than a total return unitrust.
  - b. The amount derived from other ordinary income as determined for federal income tax purposes.
  - c. The amount derived from net realized short-term capital gains as determined for federal income tax purposes.
  - d. The amount derived from net realized long-term capital gains as determined for federal income tax purposes.
  - e. The amount derived from trust principal.

Sec. 15. NEW SECTION. 637.611 TOTAL RETURN UNITRUST ADMINISTRATION.

In administering a total return unitrust, the trustee may, in the trustee's sole discretion but subject to the provisions of the governing instrument, determine all of the following:

1. The effective date of the conversion.
2. The timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases.
3. Whether distributions are to be made in cash or in kind or partly in cash and partly in kind.
4. If the trust is reconverted to an income trust, the effective date of such reconversion.
5. Such other administrative issues as may be necessary or appropriate to carry out the purposes of this subchapter.

Sec. 16. NEW SECTION. 637.612 PRINCIPAL DISTRIBUTIONS SUBJECT TO GOVERNING INSTRUMENT.

Conversion to a total return unitrust under the provisions of this subchapter shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

Sec. 17. NEW SECTION. 637.613 CONSTRUCTION AND APPLICABILITY.

This subchapter shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in Iowa under Iowa law unless any of the following apply:

1. The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust.
2. The trust is a trust described in section 170(f)(2)(B), 664(d), 1361(d), 2702(a)(3), or 2702(b) of the Internal Revenue Code.
3. One or more persons to whom the trustee could distribute income have a power of withdrawal over the trust that is not subject to an ascertainable standard under section 2041 or 2514 of the Internal Revenue Code or that can be exercised to discharge a duty of support the person possesses.
4. The governing instrument expressly prohibits use of this subchapter by specific reference to the subchapter. A provision in the governing instrument that the provisions of sections 637.601 through 637.615 or any corresponding provision of future law shall not be used in the administration of this trust or similar words reflecting such intent shall be sufficient to preclude the use of this subchapter.

Sec. 18. NEW SECTION. 637.614 GOOD FAITH ACTIONS.

Any trustee or disinterested person who in good faith takes or fails to take any action under this subchapter shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this subchapter and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the court directing the trustee to convert an income trust to a total return unitrust, or to reconvert a total return unitrust to an income trust.

Sec. 19. NEW SECTION. 637.615 EFFECTIVE DATE.

This subchapter takes effect upon the effective date of this Act and applies to trusts in existence on that date or created after that date.

#### SUBCHAPTER 7 MISCELLANEOUS PROVISIONS

Sec. 20. NEW SECTION. 637.701 APPLICATION OF CHAPTER TO EXISTING TRUSTS AND ESTATES — CHAPTER PREVAILS.

This chapter applies to every trust or decedent's estate on and after July 1, 2000, except as otherwise expressly provided in the will, the terms of the trust, or this chapter. Notwithstanding any Code provision to the contrary, the provisions of this chapter shall prevail over any other applicable Code provision.

Sec. 21. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 5, 2002